



**Moving Public Transportation**  
Into the Future

# Americans With Disabilities Act And Paratransit Services

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**May 27, 2020**

# What is ADA?

- ◆ The Americans With Disabilities Act (ADA)
- ◆ of 1990
  - Civil Rights Protection for Over 43 Million Americans—Deleted in 2008 Amendment
    - Viewed As Limiting
    - Not Discrete and Insular Minority
  - "Amendments" to the Civil Rights Act of 1964
  - Access and Equivalent Service is a Civil Right



# What Is the Goal of ADA?

- ◆ To assure that persons with disabilities have equal opportunity, a chance to fully participate in society, are able to live independently, and can be economically self-sufficient.



# 12 Chapters of ADA Circular

1. Introduction and Applicability
2. General Requirements
3. Transportation Facilities
4. Equivalent Facilitation
5. Fixed Route Service
6. Demand Responsive Service
7. **Complementary Paratransit Service**



# 12 Chapters of ADA Circular

9. ADA Paratransit Eligibility

10. Passenger Vehicles

11. Other Modes

12. Oversight, Complaints, and Monitoring



# What Does Accessibility Mean?

- ◆ Physical Access to Vehicles and Buildings
- ◆ Proper Training of Personnel
- ◆ Proper Maintenance of Equipment
- ◆ Operating Policies and Procedures
  - Complementary Paratransit Services for Fixed Route Service
- ◆ Public Information and Communication Accessible

# Impacts of the ADA

- ◆ Established A Clear National Goal
- ◆ Defines A Specific And Detailed Course Of Action
- ◆ Requires Much Greater Degree Of Affirmative Action
- ◆ Provides Accessibility Standards For Vehicles And Facilities



# Impacts of the ADA

- ◆ Elevates the Importance of Access and Nondiscrimination
- ◆ Interrelated With Section 504
  - Entities Cannot Discriminate Against Persons With Disabilities As a Condition of Federal Funding





# Primary Sections of the ADA

- ◆ Title I: Employment
- ◆ Title II: Public Services (Transportation)
- ◆ Title III: Public Accommodations and Services Operated by Private Entities
- ◆ Title IV: Telecommunications
- ◆ Title V: Miscellaneous Provisions

## Title II

- ◆ Services and Benefits Provided by Public Entities Must Be Offered In a Way That Does Not Discriminate Against Persons With Disabilities
- ◆ Implementing Federal Agencies Define:
  - What Constitutes Discrimination
  - What Actions Are Required to Ensure Services Are Non-Discriminatory

## Title II

- ◆ Subtitle A - Applies to All Service Provided By Public Entities Except Transportation
  - Implementing Agency is the USDOT
  - 49 CFR Part 35
- ◆ Subtitle B - Applies to Transportation Services Provided by Public Entities
  - Implementing Agency is the USDOT
  - 49 CFR Parts 27, 37, and 38



# Disability Definition (2016)

- ◆ Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment even if they do not currently have a disability; or being regarded as having such an impairment.



# ADA Amendments Act of 2008

- ◆ Set Forth Proper Meaning and Interpretation
- ◆ Definition Broadly Construed
- ◆ Applied Without Extensive Analysis
- ◆ Have Covered Entities Complied with Obligations Not to Discriminate Based on Disability



# ADA Amendments Act of 2008

- ◆ The Effect of the 2008 Changes is to Make it Easier for an Individual Seeking Protection Under the ADA to Establish that They have a Disability Within the Meaning of the ADA.

# Physical or Mental Impairment

- ◆ Any Physiological Disorder or Condition, Cosmetic Disfigurement, or Anatomical Loss affecting One or More Body Systems
  - Neurological,
  - Musculoskeletal,
  - Special Sense Organs,
  - Respiratory (Including Speech Organs),
  - Cardiovascular,
  - Reproductive,





# Physical or Mental Impairment

- Genitourinary,
- Digestive,
- Immune,
- Circulatory,
- Hemic,
- Lymphatic,
- Skin,
- Endocrine

# Physical or Mental Impairment

- ◆ Any Mental or Psychological Disorder
  - Intellectual Disability,
  - Organic Brain Syndrome,
  - Emotional or Mental Illness,
  - Specific Learning Disability



# Physical and Mental Impairments

- ◆ Includes But Is Not Limited to Contagious and Noncontagious Diseases and Conditions
  - Orthopedic,
  - Visual Impairments,
  - Speech Impairments,
  - Hearing Impairments
  - Cerebral Palsy,
  - Epilepsy,
  - Muscular Dystrophy,
  - Multiple Sclerosis,



# Physical and Mental Impairments

- Cancer,
- Heart Disease,
- Diabetes,
- Intellectual Disability,
- Emotional Illness,
- Dyslexia and Other Specific Learning Disabilities,
- ADHD, Symptomatic or Asymptomatic HIV, Drug Addiction,
- Alcoholism

# Physical or Mental Impairment

## ◆ Does Not Include

- Homosexuality
- Bisexuality,
- Transvestism
- Transexualism,
- Pedophilia,
- Exhibitionism,
- Voyeurism,
- Gender Identity Disorders,
- Sexual Behavior Disorders

# Physical or Mental Impairment

- Sexual Behavior Disorders
- Compulsive Gambling,
- Kleptomania,
- Pyromania
- Psychoactive Substance Use Disorders Resulting
- From Current Illegal Drug Use

# Major Life Activities

- ◆ Non-Exhaustive List of Major Life Activities
  - Caring for Oneself, Performing Manual Tasks, Seeing, Hearing, Eating, Sleeping, Walking, Standing, Sitting, Reaching, Lifting, Bending, Speaking, Breathing, Learning, Reading, Concentrating, Thinking, Writing, Communicating, Interacting with Others, Working



# Substantially Limits

- ◆ Construed Broadly
- ◆ An Impairment is a Disability if it Substantially Limits the Ability of an Individual to Perform a Major Life Activity As Compared to Most People in the General Population
- ◆ Requires a Degree of Functional Limitation that is Lower Than the Previous Standard
- ◆ Does Not Require Scientific, Medical, or Statistical Evidence



# Predictable Assessments

- ◆ Some Types of Impairments Will, In Virtually All Cases, Result in a Determination of Coverage
  - Individualized Assessment Should Be Simple and Straightforward
    - Deafness, Blindness, Intellectual Disability, Partially or Completely Missing Limbs, Mobility Impairments Requirement Use of a Wheelchair, Autism, Cancer, Cerebral Palsy, Diabetes, Epilepsy, HIV, Major Depressive Disorder, Bipolar Disorder, PTSD, Traumatic Brain Injury OCD Schizophrenia

# ADA Applicability

- ◆ Subcontractors
  - Contractors "Stand in the Shoes" of the Contracting Agency
  - Includes Contracts or "Other Arrangements or Relationships"

# ADA Applicability

- ◆ Fixed Route Service
  - "...System of Transporting Individuals...On Which Vehicles are Operating Along a Prescribed Route According to a Fixed Schedule"
- ◆ Demand Response Service
  - "...System of Transporting Individuals...Which is Not a Fixed Route System"



# ADA Applicability

## ♦ Fixed Routes

- Route/Point Deviation With Deviations Limited To Certain Riders

# ADA Applicability

- ◆ Demand Response
  - ADA Complementary Paratransit
  - Route/Point Deviation Service Open to All
  - Traditional Subscription and Casual On-Demand Services



# ADA Applicability

- ◆ Fixed Route vs. Demand Response
  - Traditional Distinction
    - Demand Response Service Requires Some Interaction Between the User and the Transit System
  - Route/Point Deviation
    - Deviate for Some – Fixed Route
    - Deviate for All – Demand Response



# ADA Applicability

- ◆ Why Such Distinctions
  - Fixed Route Services Require
    - Provision of Complementary Paratransit
    - Establishment of an Eligibility Process
  - Demand Response Services Require
    - Equivalent Service Provided to All

# Trip Denials

## ♦ Trip Denials

- When One Leg of a Multi-legged Trip Cannot Be Made, **All** of the Segments Must be Recorded as Denials
- When a Denied Trip Makes a Subsequent Trip (i.e., the Return Trip) Impossible, **Both** Trips Must be Recorded as Denials
- On Complementary Paratransit, Trips Scheduled Outside the One-Hour Negotiating Window, but Passenger Agrees to Pick-Up Time Trip **Must** be Recorded as a Denial

# Can A Transit System Refuse Service?

## ♦ All Covered Entities

- Covered Entities Shall Not Deny Service to Those Who Can Use System
- Can Refuse Service to Persons but Only in Circumstances Where the Individual Exhibits Illegal, Violent or Disruptive Behavior
  - To Be Illegal, There Must Be an Established Law Prohibiting the Behavior, Not Just a Common Standard of Appropriate Behavior
  - Seriously Disruptive Behaviors Must Be Significant, Not Just Annoying or Unpleasant



# Can A Transit System Suspend Service To a Rider?

- ◆ Regulations Allow Service Suspensions for a “Reasonable Period” for Individuals Who Establish a Pattern or Practice of Missed Trips
- ◆ Allowances for No-shows Beyond the Control of the Individual Must be Made prior to Instituting a Suspension
- ◆ A Local Policy Must be in Place to Implementa Suspension

# Service Suspensions

- ◆ Service Suspension Criteria Must be Equitable
  - Service Suspension Policies can **NOT** be Based on a Set Number of Cancellations or No Shows Within a Period of Time
  - Service Suspension Policies that Consider Percentage of Cancellations or No Shows in Comparison to Trips Taken Within a Period of Time is Acceptable
  - CANNOT Require Payment for a No-show as a Condition for Service



# Origin-to-Destination Service

- ◆ Codifies Previous FTA Guidance that ADA Complementary Paratransit Service Must be Origin-to-Destination
- ◆ Under this Standard
  - Entity May Continue to Use Curb-to-Curb Passenger Assistance Policies But Must, For Individuals Who May Need Such Assistance, Provide Origin-to-Destination Service
  - May Require an Operator to Leave a Vehicle



# Origin-to-Destination Service

- ◆ This Standard Does Not Require an Operator to Provide Door-Through-Door Service
  - Other Guidance
    - Assistance Would Result in a Fundamental Alteration or Direct Threat is Not Required





# Origin-to-Destination Service

## ◆ Practical Interpretation

- Drivers Are Not Required to
  - Leave Vehicles for Lengthy Periods of Time
  - Leave Their Vehicles Unattended or Lose the Ability to Keep Their Vehicles Under Visual Observation
  - Take Actions that Would Be Clearly Unsafe



# Nondiscrimination

- ◆ Applies to All DOT Covered Entities
  - Primary Requirement – Transport Unless the Individual
    - Engages in Violent Behavior
    - Is Seriously Disruptive
    - Exhibits Illegal Conduct
    - Represents a Direct Threat to the Health or Safety of Others

# Nondiscrimination

- ◆ Applies to All DOT Covered Entities
  - An Entity Cannot Refuse to Provide Service to an Individual with Disabilities Solely Because the Individual's Disability Results in Appearance or Involuntary Behavior that May Offend, Annoy, or Inconvenience Employees of the Entity or Other Persons



# **COMPLEMENTARY PARATRANSIT**

# Complementary and Comparable ADA Paratransit Service

- ◆ All Public Entities Operating Fixed Route Public Transportation Service Must Provide Comparable and Complementary ADA Paratransit Service





# Complementary and Comparable ADA Paratransit Service

- ◆ It Is Comparable To The Fixed Route Service In That It Operates Along and Nearby The Fixed Route Service
  - Must Cover at a Minimum an Area of  $\frac{3}{4}$  of a Mile of the Fixed Route Path
- ◆ It Is Complementary In That It Operates For Those Who Cannot Use the Fixed Route Service



# Complementary and Comparable ADA Paratransit Service

- ◆ Paratransit Meant as a "Safety Net" for Only Those Individuals Who Cannot Use Accessible Fixed Route Public Transportation
- ◆ Paratransit Not Meant as a Comprehensive System



# Complementary and Comparable ADA Paratransit Service

- ◆ ADA Paratransit Service Is a Demand Responsive Service That Operates Where and When the Fixed Route Service Operates, and Is Designed to Serve Those Disabled Persons Who Cannot Use the Fixed Route Service
- ◆ It Is Comparable To The Fixed Route Service In That It Operates Along and Nearby The Fixed Route Service
- ◆ It Is Complementary In That It Operates For Those Who Cannot Use the Fixed Route Service





# Complementary and Comparable ADA Paratransit Service

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# Complementary and Comparable ADA Paratransit Service

- ◆ Complementary Paratransit Meant to be Comparable, But Not Equivalent, to Fixed Route Service Levels
- ◆ Complementary Paratransit **MUST** Be Comparable to Fixed Route Service, as Measured by Six (6) Service Criteria, to Be Discussed Later



# Complementary and Comparable ADA Paratransit Service

- ◆ Covered Entities Must:
  - Provide Service to Eligible Individuals
  - Establish a Process to Determine Eligibility
  - Provide Service to Visitors to Your Service Area

# Paratransit Eligibility

- ◆ Law Provides for a Functional Approach to Paratransit Eligibility Determination
  - ADA Eligibility is Based Strictly on an Individuals Ability to Independently Navigate and Use the Fixed Route System
  - Trip-by-Trip Eligibility
    - Individuals May be Eligible for Some Trips, But Not Others

# Paratransit Eligibility

- ◆ A Person That Meets At Least One of The 3 ADA Criteria Qualifies for ADA Paratransit Service
- ◆ Three (3) Categories of Eligibility
  - Category I
  - Category II
  - Category III



# Paratransit Eligibility

- ◆ Category I Eligibility
  - *Any Individual with a Disability, Who is Unable, as a Result of Physical or Mental Impairment, AND Without the Assistance of Another Individual (Except Lift Operator Assistance), to Board, Ride, or Disembark from Any Vehicle on the System Which is Readily Accessible to and Usable by Individuals with Disabilities*



# Paratransit Eligibility

- ◆ Category I Eligibility
  - Travel Training Can Be Used to Mitigate Paratransit Demand, But Transit Systems Cannot Require Individuals to Participate
  - Operator Assistance is Not a Factor in Determining an Individual's Ability to Independently "Navigate" the System



# Paratransit Eligibility

## ◆ Category II Eligibility

- *Any Individual with a Disability Who Needs the Assistance of a Wheelchair Lift or Other Boarding Device and is Able, With Such Assistance, to Board, Ride, and Disembark from Any Vehicle Which is Readily Accessible to and Usable by Individuals with Disabilities if the Individual Wants to Travel on a Route of the System During Hours of Operation of the System at a Time, or Within a Reasonable Period of Such Time, When a Vehicle is Not Being Used to Provide Designated Public Transportation on the Route*





# Paratransit Eligibility

- ◆ Category II Eligibility
  - Concept of Category II Eligibility is ROUTE Based, Not System Based
  - Anticipated Demand Should Decline Over Time as the System's Fixed Routes Become Accessible
  - A Route is Considered Accessible ONLY When All Trips are Operated by Accessible Buses





# Paratransit Eligibility

## ♦ Category II Eligibility

- The Lift of An Accessible Vehicle Could Not Be Deployed at the Stop the Individual Wished to Use
- An Individual Used a Common Wheelchair, But the Bus Lift Did Not Meet Part 38 Guideline
- The Route is Not Operated With All Accessible Buses
- Accessible Buses Are Operated on the Routes, But the Lifts Are Inoperative



# Paratransit Eligibility

- ◆ Category III Eligibility
  - *Any Individual with a Disability Who Has a Specific Impairment Related Condition Which Prevents Such Individual From Traveling to a Boarding Location or From a Disembarking Location*



# Paratransit Eligibility

- ◆ Category III Eligibility
  - Category III is the Most Difficult to Determine
  - Trip-by-Trip Eligibility Explicit in the Definition
  - Category Meant to Be Defined Narrowly
  - Existence of Architectural Barriers Alone Do NOT Confer Eligibility



# Eligibility Determination

- ◆ Determine What Type of Determination/Review Process Will Be Employed
- ◆ Identify Who Will Conduct Reviews
- ◆ Design an Appeals Process
- ◆ Design Application Forms and Related Materials



# Eligibility Determination

- ◆ Provide Appropriate Training
- ◆ Pre-Test Forms and Process
- ◆ Implement Process
- ◆ Monitor and Modify, As Necessary



# Eligibility Determination

- ◆ Determination of Completed Applications Must Be Completed in 21 Days
- ◆ Presumptive Eligibility is Provided If the Certification Process Is Not Completed Within This Timeframe



# Eligibility Determination

- ◆ Eligibility Determinations Must Be in Writing and, If Necessary, In Other Appropriate Formats
- ◆ Anticipated Outcomes
  - Unconditional Certification
  - Conditional Certifications
  - Denials



# Eligibility Determination

- ◆ Approvals or Conditional Approvals Should Contain the Following Documentation
  - Name of Eligible Individual
  - Name of Transit Provider
  - Telephone Number of Paratransit Coordinator
  - Expiration Data (If Applicable)
  - Conditions or Limitation





# Eligibility Determination

## ◆ Appeals Process

- Follow Progressive Steps
- Local Level
- FTA Regional (Urban) or State (Rural)
- FTA Headquarters
- US Department of Justice



# Eligibility Determination

## ◆ Appeals Process

- May Appeal Either a Denial or A Conditional Eligibility Certification
- Opportunity to Have Appeal Heard Either Through
  - Written Testimony
  - In-Person Appearance
  - Testimony of Others



# Eligibility Determination

## ◆ Appeals Process

- Due Process
- Separation of Function
  - Persons Making Initial Determination Should Not be in a Position to Evaluate Appeals



# Eligibility Determination

- ◆ Appeals Process
  - Appeal Decisions Must Be Communicated in Writing
  - Presumptive Eligibility is Provided if Appeal is Not Determined Within 30 Days After Completion
- ◆ Appeals Do Not Have To Be Accepted if Received More Than 60 Days After the Initial Notice of Determination

# Service Criteria

- ◆ Six Service Criteria
  - Service Area
  - Response Time
  - Fares
  - Trip Purposes and Priorities
  - Hours and Days of Service
  - Capacity Constraints

# Fare Criteria

## ◆ Fares

- Complementary Paratransit Fares Cannot Exceed Twice the Base Fare for A Comparable Fixed Route Trip (Without Regard for Discounts)
- Cannot Impose Special Charges
- Fare Premiums, Transfers, Zone Fares, Etc., May Be Included
- Personal Care Attendants Ride Free
- Companions Pay the Same Fare as the Disabled Passenger



# Fare Criteria

## ◆ Fares

- Services to Individuals Under Contract to a Human Service Agency are Not Subject to this Provision
- Differences Between "Agency Trips" Made by Clients Who Are ADA Eligible Individuals and Independent Trips Subject to the Fare Cap

# Fare Criteria

## ◆ Fares:

- Cannot Charge More for Accommodating Accessibility Aids
- Fare Distinctions That Do Not Adversely Impact Persons With Disabilities Are Permissible As Long As They Are Then Available To Riders With and Without Disabilities





# Fare Criteria

## ◆ Premium Fares

- Services Provided Under Contract
  - Trips Guaranteed to the Agency at the Time and Number Requested by the Agency
  - Participates in the Reservations Process
  - Agency Pays for the Trip(s)
  - Agency Designates Who Rides
  - Remember...the ADA Applies to Individuals, Not Agencies
- Services Above and Beyond ADA Requirements

# Trip Purpose

- ◆ Trip Purpose Restrictions
  - The Public Agency May Not Impose Restrictions or Priorities Based on Trip Purpose



# Hours and Days of Service

- ◆ Hours and Days of Service
  - Paratransit Must Be Provided During the Same Days and Hours as Fixed Route Service
    - Shape of Service Area May Change During the Day
    - Different Service Strategies for Service Delivery May be Employed (*e.g.*, Low Demand Periods)
    - Special Event Service May Trigger Paratransit



# Annual Certification

- ◆ If Entity Has Met and is Continuing To Meet All Requirements for Complementary Paratransit in 49 CFR part 37.121–37.133, It May Submit to FTA an Annual Certification of Continued Compliance in Lieu of a Plan Update



# GDOT Annual Certification

## ADA COMPLIANCE CERTIFICATION Fixed Route Service

\_\_\_\_\_  
(Grantee Legal Name)

hereby affirms that \_\_\_\_\_ is in  
(Transit System)

compliance with the Americans with Disabilities Act for providing complementary paratransit service as required in ADA Circular 4710.1

\_\_\_\_\_ has a paratransit plan in place. The  
(Transit System)  
plan was last updated on \_\_\_\_\_ and provides equivalent service to the fixed route service.

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Date

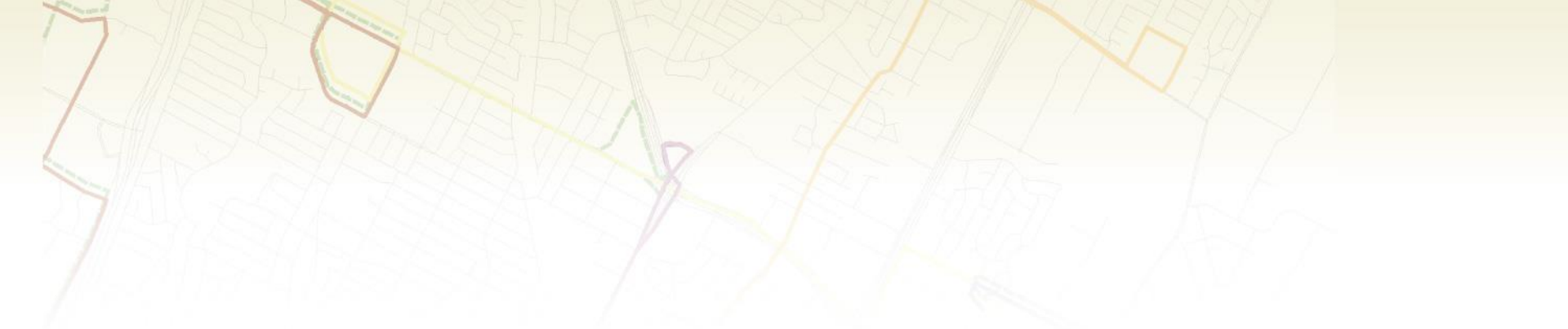
\_\_\_\_\_  
Title of Authorized Official

Note: This is a self-certification by the subrecipient that they are in compliance with the FTA requirements related to Complementary Paratransit. By signing this certification you are affirming your system meets all the requirements for fixed route service under the ADA Circular 4710.1



# GDOT Key Performance Indicators

- ◆ Denials
- ◆ Missed Trips
- ◆ On Time Performance
- ◆ Excessively Long Trips



# **ADDITIONAL ADA REQUIREMENTS**



# Personal Care Attendants

- ◆ A Personal Care Attendant (PCA) Must Always be Allowed to Ride With an Eligible Individual
  - A PCA is Someone Specifically Designated or Employed by the Disabled Person and is Required by the Person in Order to Complete the Trip Or the Trip Purpose
- ◆ The Entity May Not Charge a Fare for a PCA
- ◆ The Entity Can Not Require a PCA



# Portable Oxygen Tanks

- ◆ Portable Oxygen
  - Must Allow Travel With a Respirator or Personal Oxygen Supply, Consistent With Applicable USDOT Rules Regarding Transport of Hazardous Materials



# Priority Seating

- ◆ Priority Seating
  - Can Ask, But Cannot Require Individuals to Move from Priority or Designated Seating Locations
  - Signage Requirements
    - Designated Locations





# Service Animals

- ◆ Department of Justice
  - Accommodating Service Animals (DOJ)
    - System Must Permit Service Animals to Accompany Individuals With Disabilities In Vehicles and Facilities
      - Dogs and Miniature Horses that are Individually Trained to Do Work or Perform Tasks for People with Disabilities



# Service Animals

- ◆ Department of Transportation
  - Service Animals Defined as "Any Guide Dog, Signal Dog, or Other Animal Individually Trained to Perform Tasks For An Individual With a Disability, Including But Not Limited to Guiding Individuals With Impaired Vision, Alerting Individuals With Impaired Hearing to Intruders or Sounds, Providing Minimal Protection or Rescue Work, Pulling a Wheelchair, or Fetching Dropped Items"

# Service Animals

- ◆ DOT Clarification of Allowed Species
  - More Specific Definition Of "Service Animals"
    - Excludes Non-human Primates and Exotic Animals (e.g. Snakes, Reptiles)\*
    - Distinguishes Between Psychiatric Service Animals and Comfort Animals
      - Psychiatric Service Animals Are Allowed "If They Are Trained to Perform a Task"
      - Excludes Animals Whose "Sole Function Is to Provide Emotional Support, Comfort, Therapy, Companionship, Therapeutic Benefits, Or Promote Emotional Well-Being"

\* FRA rule, Since 2016, FTA has provided technical assistance guidance consistent with the FRA rule.



# Service Animals

- ◆ Riders must be permitted to travel with service animals that are trained to assist them
  - May Ask if a Pet
  - May Ask What Service the Animal is Trained to Perform
  - May **NOT** ask About Disability
  - May **NOT** Require a Harness
  - May **NOT** ask for Proof of Certification or Other Documentation



# Service Animals

## ♦ Service Animals

- Allergies and Fear of Animals Are Not Valid
- Reasons For Refusing Service
- Animal Must Be Under Control of the Passenger
- Don't Touch or Speak to the Service Animal – It is Working
- Service Animals are Not Required to Wear Identification Such as a Tag, Vest, or Harness







# Accessible Information

## ◆ Adequate Information

- Obligation Includes Making Adequate Communications Capacity Available, Through Accessible Formats And Technology, to Enable Users to Obtain Information, Register for and Obtain Service
  - Provide Upon Request
  - Usable to Individual
  - Appropriate for the Intended Use
    - Providing Information Over the Phone is Not Considered a Substitute for Written Information



# Accessible Information

- ◆ Access to Information – All Printed Material Must Be Available Upon Request and in an Accessible Format and Form That The Person Can Use
  - Does Not Have to be Preferred Method if Other Means can be Used
- ◆ Public Hearings Must Be Held in Accessible Locations



# Accessible Information

- ◆ Adequate Information
  - TTYs (TDDs)
  - Relay Services
  - Brail
  - Large Print
  - Information Compatible with Computer Assistive Software
  - Access to Accessible Information Must Be Provided Equivalent to General Information Access



# Accessible Information

- ◆ Not To Be Confused With Limited English Proficiency Requirements



# Training To Proficiency

## ♦ Training

- Drivers and Other Staff Shall Be Trained to “Proficiency”
  - Appropriate To Duties
  - Safe Operation Of Vehicles And Equipment
  - Respectful And Courteous Customer Service
  - Disability Awareness
  - Appropriate Passenger Assistance



# Adequate Time to Board and Alight

- ◆ The Entity Must Ensure That Adequate Time Is Provided to Allow Individuals With Disabilities to Complete Boarding and Alighting From the Vehicle

# Trip Denials

## ◆ Trip Denials

- When One Leg of a Multi-legged Trip Cannot Be Made, **All** of the Segments Must be Recorded as Denials
- When a Denied Trip Makes a Subsequent Trip (i.e., the Return Trip) Impossible, **Both** Trips Must be Recorded as Denials
- On Complementary Paratransit, Trips Scheduled Outside the One-Hour Negotiating Window, but Passenger Agrees to Pick-Up Time Trip **Must** be Recorded as a Denial



# How Does ADA Impact Non-Profit Subrecipients?

- ◆ Section 5311 Nonprofit Subrecipients Operating Fixed Route Service
  - FTA Views States As Primary Grantee
  - If a State Provides § 5311 Funding to a Private Entity Via a Contract or Grant, Which Then Provides Fixed Route Service, ADA Complementary Paratransit Service Must be Available



# Can A Transit System Refuse Service?

## ♦ All Covered Entities

- Covered Entities Shall Not Deny Service to Those Who Can Use System
- Can Refuse Service to Persons but Only in Circumstances Where the Individual Exhibits Illegal, Violent or Disruptive Behavior
  - To Be Illegal, There Must Be an Established Law Prohibiting the Behavior, Not Just a Common Standard of Appropriate Behavior
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- ◆ Regulations Allow Service Suspensions for a “Reasonable Period” for Individuals Who Establish a Pattern or Practice of Missed Trips
- ◆ Allowances for No-shows Beyond the Control of the Individual Must be Made prior to Instituting a Suspension
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  - Service Suspension Policies can **NOT** be Based on a Set Number of Cancellations or No Shows Within a Period of Time
  - Service Suspension Policies that Consider Percentage of Cancellations or No Shows in Comparison to Trips Taken Within a Period of Time is Acceptable
  - CANNOT Require Payment for a No-show as a Condition for Service

A faded, light-colored map of a residential area with street grids and property boundaries. Several areas are highlighted with colored outlines: a red outline on the left, a yellow outline in the upper center, a green outline in the center, and an orange outline on the right. The map is semi-transparent, allowing the text below to be clearly visible.

# **REASONABLE MODIFICATION**



# Reasonable Modification (2015)

- ◆ USDOT Published Final Rule on March 13, 2015
- ◆ Rulemaking – Almost 10 Years in the Making
  - NPRM - 2006
- ◆ Applies Concept of Reasonable Accommodation to USDOT Covered Entities
  - New Definitions
  - Practice Changes
  - Effective Date: July 13, 2015



# Reasonable Modification

- ◆ Title II of the ADA
  - State and Local Governments (DOJ)
    - Reasonable Modifications to Policies, Practices, and Procedures Where Necessary to Avoid Discrimination, Unless They Can Demonstrate That Doing So Would Fundamentally Alter the Nature of the Service, Program, or Activity
  - Public Transit (DOT)
- ◆ Title III of the ADA
  - Places of Public Accommodation



# Reasonable Modification

- ◆ DOJ and DOT Have Oversight Responsibilities in Their Respective Sections of Article II
- ◆ DOT Contention That Reasonable Accommodation Always Applied to Entities Covered by DOT Rule
- ◆ Courts Have Not Always Agreed With that Assessment



# Reasonable Modification

- ◆ This Rule Clarifies That Elements of the DOJ Rules Apply to Public Transit Service Providers
  - 28 CFR 35.130(b)(7)
- ◆ USDOT Issued These Rules So There Is an Explicit Requirement



# Reasonable Modification

- ◆ What the Rule Does
  - Amends the Section 504 Rule (49 CFR part 27) on Types of Discrimination Prohibited
    - Adds Definition of Reasonable Accommodation
      - Cross Reference to DOJ Regulation
    - Requires Complaint Process and Designation of Responsible Individual
  - For Many Community Transportation Providers, This is “Business as Usual” – You Have Been Doing Reasonable Modification for Years



# Amendments

## ♦ What the Rule Does

- Amends the USDOT Rule on the ADA (49 CFR part 37)
  - Adds Definition of “Origin-to-Destination” Service
  - Clarifies Circumstances When Services Can be Refused (Codifies Previous Issued Guidance)
  - Requires Both Public and Private Transportation Entities to Make Reasonable Accommodation
    - Public Entities
      - » Designation of Responsible Employee and Complaint Procedures

# Reasonable Accommodation

- ◆ Applies to
  - Policies
  - Practices
  - Procedures
- ◆ Applies When a Change in Policy, Practice, or Procedures Would Avoid Discrimination on the Basis of Disability (e.g., Refusal of Service)



# Reasonable Modification

## ◆ Origin-to-Destination Service

- Many in Industry Believe that Only Curb-to-Curb Service Required
- Regulation, However, Refers to Origin-to-Destination Service
- Where the Local Planning Process Establishes Curb-to-Curb Service as the Basic Paratransit Service Mode, Provision Should Still Be Made to Ensure That the Service Available to Each Passenger Actually Gets the Passenger From His or Her Point of Origin to His or Her Destination Point



# Reasonable Modification

- ◆ Origin-to-Destination Service
  - To Meet This Origin To Destination Requirement, Service May Need to Be Provided to Some Individuals, or at Some Locations, in a Way That Goes Beyond Curb-to-Curb Service



# Reasonable Modification

## ◆ Exceptions

### ○ Accommodation Would

- Be a Fundamental Alteration the Nature of the Service
- Create a Direct Threat to the Health or Safety of Others
- Passenger is Able to Fully Use the Transportation Entity's Service Without Accommodation



# Reasonable Modification

- ◆ If An Exception Applies, the Entity May Deny Request
- ◆ If Denial, Additional Obligations Apply
  - Take Other Actions To Ensure The Disabled Person Receives Transit Service (49 CFR part 37.169(e))
    - Denial of Service Should be Transit Agency's Last Option

# Complaint Process

- ◆ Designation of Responsible Employee
  - Name, Address, Telephone Number, and Email
  - Sufficiently Advertised—Web/Other
- ◆ No Regulatory Training Requirements
  - Designated Employee is Responsible for Making Decisions That Impacts an Individual's Civil Rights
    - Should be Trained on ADA/Reasonable Accommodation Rule
    - Should Have Authority to Make Key Operational Decisions



# Complaint Process

## ◆ Due Process

- Ensure that an Administrative Alternative is Available So that an Individual Can Appeal an Adverse Decision on Reasonable Accommodation
  - Have Another Individual/Group Hear the Appeal
  - Permit Presentation of Evidence/Direct Appearance
  - Establish Fixed Milestones for Filing, Deliberating, and Ruling on Appeals
- ADA Eligibility Determinations May Represent a Model for Structure



# Complaint Process

- ◆ Response to Complaint Must Be Promptly Communicated Including Reasons for the Response
  - Accessible and Usable By Individuals With Disabilities
  - Standards for Prompt and Equitable Resolution of Complaints
    - No Definition for Prompt Given
  - Established Procedures for Promptly Communicating its Response

# Complaint Response

- ◆ Elements of the Response
  - Response Decision
  - Reasons For the Response
  - Appeals Procedures

# Complaint Process

## ◆ Documentation

- Notification Does Not Have To Be In Writing
- Copies of Internal Documentation Maintained for One Year
- Summary Maintained for Five Years

# Modification Requests

- ◆ Individuals Making a Request
  - Must be a Qualified Individual with a Disability (per ADA definition)
  - Should Describe the Requested Modification
  - Need Not Identify the Request or Use the Term “Reasonable Modification” in Order to be Considered
  - Should be Requested in Advance, if Possible



# Modification Requests

- ◆ Individuals Making a Request
  - Where a Request for Modification Cannot Practicably be Made and Determined in Advance
    - Operating Personnel of the Entity Shall Make a Determination of Whether the Modification Should Be Provided at the Time of the Request
    - Operating Personnel May Consult With The Entity's Management Before Making a Determination to Grant or Deny the Request

# Origin-to-Destination Service

- ◆ Codifies Previous FTA Guidance that ADA Complementary Paratransit Service Must be Origin-to-Destination
- ◆ Under this Standard
  - Entity May Continue to Use Curb-to-Curb Passenger Assistance Policies But Must, For Individuals Who May Need Such Assistance, Provide Origin-to-Destination Service
  - May Require an Operator to Leave a Vehicle



# Origin-to-Destination Service

- ◆ This Standard Does Not Require an Operator to Provide Door-Through-Door Service
  - Other Guidance
    - Assistance Would Result in a Fundamental Alteration or Direct Threat is Not Required



# Origin-to-Destination Service

## ◆ Practical Interpretation

- Drivers Are Not Required to
  - Leave Vehicles for Lengthy Periods of Time
  - Leave Their Vehicles Unattended or Lose the Ability to Keep Their Vehicles Under Visual Observation
  - Take Actions that Would Be Clearly Unsafe



# Nondiscrimination

- ◆ Applies to All DOT Covered Entities
  - Primary Requirement – Transport Unless the Individual
    - Engages in Violent Behavior
    - Is Seriously Disruptive
    - Exhibits Illegal Conduct
    - Represents a Direct Threat to the Health or Safety of Others

# Nondiscrimination

- ◆ Applies to All DOT Covered Entities
  - An Entity Cannot Refuse to Provide Service to an Individual with Disabilities Solely Because the Individual's Disability Results in Appearance or Involuntary Behavior that May Offend, Annoy, or Inconvenience Employees of the Entity or Other Persons

# Oversight

- ◆ Direct Recipients
  - Unnecessary to Obtain FTA Permission in Making Reasonable Accommodation Decisions
- ◆ Subrecipients
  - Transit System Should Have a Designated Employee and Procedures

# Likely Impacts

- ◆ Real Time, Situational Decisions at Fixed Route Bus Stops
- ◆ Occasional Complementary Paratransit and Demand Response Requests for Alternative Drop-Off/Pick-Up
- ◆ Higher Levels of Passenger Assistance Requests
  - May Challenge Safety of Other Concept

# Likely Impacts

- ◆ Systems Likely to Have Addressed These One- on-One Issues in the Past
- ◆ Ensure Some Flexibility in Service Policy
  - Rigid Application of Service Rules to Deny Mobility Would be Inconsistent With the New Rule

# Some Examples

- ◆ The Next Several Slides Illustrate Some Situations Cited by FTA and Suggested Actions
- ◆ Not Prescriptive, But Suggestive

# Some Examples

Topics	Scenarios
Operating Parameter	Environmental conditions at pick-up or drop-off locations
Applicable Mode	Fixed route, complementary paratransit, demand response
Condition	Snow or ice at the stop or accessible pathway
Modification Request	Provide additional passenger assistance beyond curb-to-curb
Reasonable Accommodation	Grant the request. For complementary paratransit, this would be consistent with “origin-to-destination” requirements.

# Some Examples

Topics	Scenarios
Operating Parameter	Environmental conditions at pick-up or drop-off locations
Applicable Mode	Fixed route, complementary paratransit, demand response
Condition	Snow or ice at the stop or accessible pathway
Modification Request	Move bus to different, but approximate location to the existing stop, to allow for safer lift deployment and passenger egress/access
Reasonable Accommodation	Grant the request. Discretion must be used by the bus operator on reasonable proximity of the alternate location (if any) and new safety concerns that may be present at these alternate stops. Traffic, parked cars, and other factors beyond control of the driver may have to come into play that would result in a decision not to grant the request.



# Some Examples

Topics	Scenarios
Operating Parameter	Private property
Applicable Mode	Complementary paratransit, demand response
Condition	Lack of transit agency access to property
Modification Request	Access the private property to pick-up or drop-off passenger
Reasonable Accommodation	<p>The transit system should make every reasonable effort to gain access to such an area (<i>e.g.</i>, work with the passenger to get the permission of the property owner to permit access for the paratransit vehicle); if permission is gained, grant the request provided locations do not impose a safety threat. Transit agencies are not required to illegally access private property in order to meet this rule.</p>

# Some Examples

Topics	Scenarios
Operating Parameter	Fare handling
Applicable Mode	Fixed route, complementary paratransit, demand response
Condition	An individual's disability precludes the person from depositing fares into fare collection devices.
Modification Request	Provide passenger assistance in the deposit of fare revenue or processing of other media
Reasonable Accommodation	Grant the request; assist the passenger with payment. Transit personnel are not required to reach into pockets or backpacks in order to extract the fare media.



# Questions and Comments